IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2721 OF 2006

IN
SUIT NO.2384 OF 2006

Jerome S/o. Barnard Lobo & Ors. ...Plaintiffs

Versus

M/s. Tulsi Foundation & Ors. ...Defendants

Ms. Sumedha Rao, Advocate, for Plaintiffs.

Ms. Armin Wandrewala, Advocate, i/b. Pravin Mehta & Mithi & Co., for Defendant Nos.1 and 2.

Mr. B.R. Zaveri, Advocate, for Defendant No.3.

Mr. Milind More, AGP, for Defendant No.5

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH AUGUST, 2006

P.C. :

. This is a second round of litigation. The Plaintiffs had filed Suit No.1133/2006. In that suit the Plaintiffs had also challenged the Deed of Conveyance on the ground of forgery.

2. The Plaintiffs had taken out Notice of Motion No.1283/2006 in Suit No.1133/2006.

. In that Notice of Motion, the Plaintiffs

sought an order of injunction restraining the development of the land on the footing as if two plots were common and developing any part or portion in dispute in this suit.

3. This prayer was rejected by an order dated 24th April, 2006. Being aggrieved by the aforesaid order, an appeal was filed against the said order by the Plaintiffs.

4. By an order dated 8th May, 2006, the learned Vacation Judge rejected the Plaintiffs' application for stay of construction under TDR to the extent of 166.85 sq.mtr. Ultimately, the Division Bench by an order dated 13th June, 2006 dismissed the appeal. Liberty was granted to the Plaintiffs to amend the said Notice of Motion No.1283/2006 or to file a fresh Notice of Motion.

5. The Plaintiffs had not amended the said Notice of Motion, but has filed the present suit. The reason for filing the present suit is that the development agreement was furnished to the Plaintiffs only after filing of the earlier Suit No.1133/2006.

6. The reliefs prayed today are identical namely

an order restraining the Defendants from developing/ construction under TDR to the extent of 166.85 sq.mtr.

7. The mere fact that the development agreement was furnished later on wherein one of the recitals states that the property has been notionally divided does not entitle the Plaintiffs to the same reliefs which have already been rejected.

8. In the circumstances, no ad-interim order. Notice of Motion is returnable in normal course.